

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Mills	Team: Team # 3	CCRB Case #: 201407314	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/19/2014 2:00 AM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 1/19/2016	EO SOL 1/19/2016	
Date/Time CV Reported Mon, 07/21/2014 12:07 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/21/2014 12:07 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nelson Reyes	27566	953309	073 PCT
2. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Laurance Laverty	26559	952970	073 PCT
2. POM Jorge Castro	09689	952559	073 PCT
3. SGT George Tavares	05354	931301	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A. POM Nelson Reyes	Force: PO Nelson Reyes used physical force against § 87(2)(b)	
B. An officer	Abuse: An officer attempted to interfere with § 87(2)(b)'s recording of the incident.	

### Case Summary

At approximately 2 a.m. on July 19, 2014, PO Nelson Reyes, PO Laurence Laverty, PO Jorge Castro, and Sgt. George Tavares of the 73<sup>rd</sup> Precinct responded to a noise complaint regarding a party in the backyard of § 87(2)(b) in Brooklyn. PO Reyes approached § 87(2)(b) and requested his identification. § 87(2)(b) asked “for what?” in an irritated voice, and added that his wife had his identification. PO Reyes placed his right forearm against § 87(2)(b) chest and shoved him against the wall behind him, then allegedly punched § 87(2)(b) in the penis with his left fist, in an uppercut motion (**Allegation A**). PO Reyes then handcuffed § 87(2)(b) and left him standing for approximately forty-five minutes while the officers issued a summons to the DJ and dismantled the DJ’s equipment. § 87(2)(b) was arrested and charged with § 87(2)(b)

§ 87(2)(b) s wife, alleged that when she attempted to record the incident, an officer pointed her flashlight into the camera to prevent it from capturing the incident (**Allegation B**).

### Mediation, Civil and Criminal Histories

Mediation was not offered to § 87(2)(b) as an alternative to resolve his complaint § 87(2)(b). His notice of claim has been requested from the comptroller’s office and will be added to the case file upon its receipt at the CCRB.

§ 87(2)(b) § 87(2)(c)

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### Civilian and Officer CCRB Histories

Neither § 87(2)(b) nor § 87(2)(b) has filed any other complaints with the CCRB. (Encl. 2a-2b)

PO Reyes has been a member of the service for two years and there are no substantiated allegations against him. Three previous complaints against him have been closed as unsubstantiated, § 87(2)(g) (Encl.2c)

### Potential Issues

The investigation was able to obtain three different clips of cell phone video footage of the incident, including the force used. However, the footage is dark and partially unclear.

§ 87(2)(b) and his wife, § 87(2)(b) provided partial contact information for twelve witnesses from the party, and the investigation was able to obtain brief phone statements from five of them. (Encl. 6a-6f) However, the investigation was unable to obtain sworn statements from any of the twelve witnesses, since the five who provided phone statements did not appear for their interviews, and the investigation was unable to reach the other seven.

### Civilian Statements Complainants/Victims

§ 87(2)(b)

- § 87(2)(b) was interviewed at the CCRB on August 19, 2014. (Encl. 4a-4d)
- § 87(2)(b) is § 87(2)(b). He was § 87(2)(b) at the time of the incident. He had consumed one or two drinks that night.
- PO Reyes approached § 87(2)(b) and immediately requested his identification.

- § 87(2)(b) asked why, but PO Reyes requested his identification again.
- § 87(2)(b)'s wife had his identification, so he told PO Reyes that he did not have his identification, and again asked why he was being asked for it.
- PO Reyes pushed § 87(2)(b) back against the wall by placing his right forearm against § 87(2)(b)'s chest.
- PO Reyes then swung his left fist in an uppercut motion between § 87(2)(b)'s legs, punching him in the penis.
- PO Reyes then handcuffed and arrested § 87(2)(b).

### Witnesses

§ 87(2)(b)

- § 87(2)(b) was § 87(2)(b)'s wife. She was interviewed at the CCRB on October 14, 2014. (Encl. 5a-5d)
- PO Reyes approached § 87(2)(b) and immediately requested his identification.
- § 87(2)(b) asked why, but PO Reyes pushed § 87(2)(b) back against the wall by placing his right forearm against § 87(2)(b)'s chest.
- PO Reyes then punched § 87(2)(b) in the chest and kneed him in the crotch.

### Additional Witnesses (Encl. 6a-6f)

- § 87(2)(b) a relative of § 87(2)(b)s, provided a brief phone statement in which she alleged that approximately twenty officers arrived and an officer kicked or kneed § 87(2)(b) then hit him for no reason.
- § 87(2)(b) a friend of § 87(2)(b)s, provided a brief phone statement in which she alleged that that an officer asked § 87(2)(b) for identification, and when § 87(2)(b) pointed at § 87(2)(b) the officer grabbed his hand, kneed him in the crotch, and threw him against the wall.
- § 87(2)(b) another friend, provided a brief phone statement in which she alleged that that numerous officers entered the party and began grabbing people. One of those people was § 87(2)(b) and after § 87(2)(b) explained that his wife had his identification, the officer holding him punched him in the stomach and crotch.
- § 87(2)(b) another friend, provided a brief phone statement in which she alleged that that though she was far away, it appeared that an officer knocked § 87(2)(b)'s drink out of his hands and kneed him in the crotch.
- § 87(2)(b) another friend, provided a brief phone statement in which she alleged that that an officer asked § 87(2)(b) for identification, and when § 87(2)(b) asked why, the officer pushed him against a wall, handcuffed him, and then suddenly hit him. § 87(2)(b) thought the officer hit § 87(2)(b) in the stomach, but later heard people say that the officer hit § 87(2)(b) in the testicles.
- None of the witnesses stated that § 87(2)(b) flailed his arms, pushed PO Reyes, or otherwise interfered with the officers.
- § 87(2)(b) and § 87(2)(b) provided partial contact information for additional witnesses who could not be reached.

### Officer Statements

#### **Subject Officer: PO NELSON REYES**

- PO Reyes was interviewed at the CCRB on January 16, 2015. (Encl. 8a-8c)
- PO Reyes is 5'11" tall and 225 pounds.

- PO Reyes stated that while Sgt. Tavares was speaking with the DJ, § 87(2)(b) who appeared intoxicated, approached Sgt. Tavares, making statements to the DJ such as “don’t fucking talk to them.”
- § 87(2)(b) then placed his body between Sgt. Tavares and the DJ, and then refused to step aside when PO Reyes instructed him to do so.
- PO Reyes then requested § 87(2)(b)’s identification, but § 87(2)(b) refused to provide it, stating “you aint’ getting shit.”
- PO Reyes then told § 87(2)(b) to wait, and after Sgt. Tavares was finished issuing a summons to the DJ, he told § 87(2)(b) that he could not issue a summons in lieu of arrest without identification.
- § 87(2)(b) backed against the wall of his own accord, and PO Reyes attempted to grab his arms to handcuff him. However, § 87(2)(b) flailed his arms, pushed PO Reyes backwards, and attempted to slide along the wall towards the door.
- Meanwhile, people began throwing bottles of alcohol at the officers.
- When asked during his official statement if he had punched § 87(2)(b) in the penis, PO Reyes stated that he had attempted to punch § 87(2)(b) in the stomach “to get him to stop resisting. It wasn’t in order to hurt him. It was more to shock him to get him to stop pushing me.”
- But, PO Reyes added that he was “not an efficient boxer” and was “not going to be like ‘yo, I aimed for that and I hit him there.’” He believed he hit § 87(2)(b) in the stomach and not in the “testicles.”
- Prior to being shown the video footage, he stated that if the video footage showed him pushing § 87(2)(b) it was because § 87(2)(b) was pushing him.
- PO Reyes denied pushing § 87(2)(b) against the wall the way § 87(2)(b) and § 87(2)(b) had alleged.

**Witness Officer: PO LAURENCE LAVERTY**

- PO Laverty was interviewed at the CCRB on February 10, 2015. (Encl. 10a-10b)
- PO Laverty, who was identified from the video footage as standing in the vicinity of PO Reyes’ interaction with § 87(2)(b) did not recall PO Reyes’ interaction with § 87(2)(b).
- However, PO Laverty recalled that additional units were called, since the backyard was “pitch dark” and people were throwing bottles of alcohol at the officers.

**Witness Officer: SGT. George Tavares**

- Sgt. Tavares was interviewed at the CCRB on March 2, 2015. (Encl. 12a-12b)
- Sgt. Tavares did not witness the circumstances of § 87(2)(b)’s arrest, since the officers dispersed to different areas of the yard and he was interacting with the DJ throughout the incident.
- Sgt. Tavares could not account for PO Reyes’ actions at the party, and did not notice § 87(2)(b) until he saw § 87(2)(b) standing ten feet away with PO Reyes after other partygoers dispersed.
- PO Reyes informed Sgt. Tavares at the stationhouse that § 87(2)(b) was arrested for disorderly conduct.

**NYPD Documents**

PO Reyes prepared an arrest report for § 87(2)(b) which corroborated his statement that § 87(2)(b) interfered with the officers and then resisted arrest, but also indicated that no physical force was used. (Encl. 13a-13c)

The Command Log entry for § 87(2)(b)'s arrest indicates that his physical appearance was normal. (Encl. 17)

The Event Chronology confirms that noise complaints were filed regarding the party. (Encl. 16a-16e)

### **Other Evidence**

§ 87(2)(b) provided video footage of the incident taken by an onlooker. The footage is saved under Investigative Action number 17 under the filename 201407314\_20140825\_0942\_DM.mov. (Encl. 14c)

- For the first six seconds of the video, the camera moves rapidly, but an officer is visible facing away from § 87(2)(b) and PO Reyes.
- Unidentified voices can be heard saying “move back” and “she’s not in the way.”
- Approximately six seconds into the video, PO Reyes and § 87(2)(b) are visible, though not clearly.
- PO Reyes is standing with his back to the camera, and § 87(2)(b) is standing facing him.
- A third officer appears to be standing directly to § 87(2)(b)'s left, facing him, but it is not clear what he is doing.
- It is difficult to see what they are doing, but they do not appear to be struggling.
- At 00:07 seconds in the video, PO Reyes’ right arm moves backwards, and then moves forwards in what appears to be an uppercut motion towards § 87(2)(b)'s midsection.
- People begin shouting, and someone can be heard saying “he punched him.”
- The video ends.

### **Officer Identification**

PO Reyes, PO Laverty, and Sgt. Tavares confirmed their involvement in the incident. Though additional units arrived, they arrived after the alleged force, and the officers were unable to identify the additional units from the video footage.

PO Reyes confirmed that he punched § 87(2)(b)

The investigation was unable to identify the officer who allegedly attempted to interfere with § 87(2)(b)'s recording of the incident, since the officer’s shield and nameplate are not legible in the footage, and the officers interviewed were unable to identify her.

### **Findings and Recommendations**

#### **Allegation A – Force: PO Nelson Reyes used physical force against § 87(2)(b)**

It is undisputed that PO Reyes used physical force against § 87(2)(b) § 87(2)(g). § 87(2)(b) stated that PO Reyes immediately approached him and requested identification, and that he responded “for what?” and stated that his wife had his identification. He described his demeanor as being irritated. He also contended that he had only consumed one or two drinks at the party and was not intoxicated. § 87(2)(b) alleged that PO Reyes then placed his right forearm against his chest and shoved him against the wall behind him, then punched him in the penis with his left fist, in an uppercut motion.

§ 87(2)(b)'s wife, § 87(2)(b) stated that PO Reyes immediately approached § 87(2)(b) and requested his identification. When § 87(2)(b) asked why, PO Reyes pushed him against the wall. § 87(2)(b) responded “that’s not necessary,” and “what are you pushing me

for?” but PO Reyes punched him in the stomach with his right hand in an uppercut motion, then kneed him in the crotch area with his right knee.

The following individuals provided brief phone statements but not sworn statements.

§ 87(2)(b) a relative of § 87(2)(b)s, alleged that approximately twenty officers arrived and an officer kicked or kneed § 87(2)(b) then hit him for no reason. § 87(2)(b) a friend of § 87(2)(b)s, stated that an officer asked § 87(2)(b) for identification, and when § 87(2)(b) pointed at § 87(2)(b) the officer grabbed his hand, kneed him in the crotch, and threw him against the wall. § 87(2)(b) another friend, stated that numerous officers entered the party and began grabbing people. One of those people was § 87(2)(b) and after § 87(2)(b) explained that his wife had his identification, the officer holding him punched him in the stomach and crotch. § 87(2)(b) another friend, stated that though she was far away, it appeared that an officer knocked § 87(2)(b)s drink out of his hands and kneed him in the crotch. § 87(2)(b) another friend, stated that an officer asked § 87(2)(b) for identification, and when § 87(2)(b) asked why, the officer pushed him against a wall, handcuffed him, and then suddenly hit him. § 87(2)(b) thought the officer hit § 87(2)(b) in the stomach, but later heard people say that the officer hit § 87(2)(b) in the testicles. None of the witnesses stated that § 87(2)(b) flailed his arms, pushed PO Reyes, or otherwise interfered with the officers.

PO Reyes stated that while Sgt. Tavares was speaking with the DJ, § 87(2)(b) who appeared intoxicated, approached Sgt. Tavares, making statements to the DJ such as “don’t fucking talk to them.” PO Reyes stated that § 87(2)(b) then placed his body between Sgt. Tavares and the DJ, and then refused to step aside when PO Reyes instructed him to do so. PO Reyes stated that he then requested § 87(2)(b)s identification, but § 87(2)(b) refused to provide it, stating “you aint’ getting shit.” PO Reyes then told § 87(2)(b) to wait, and after Sgt. Tavares was finished issuing a summons to the DJ, he told § 87(2)(b) that he could not issue a summons in lieu of arrest without identification. § 87(2)(b) backed against the wall of his own accord, and PO Reyes attempted to grab his arms to handcuff him. However, § 87(2)(b) flailed his arms, pushed PO Reyes backwards, and attempted to slide along the wall towards the door. Meanwhile, people began throwing bottles of alcohol at the officers. When asked during his official statement if he had punched § 87(2)(b) in the penis, PO Reyes stated that he had attempted to punch § 87(2)(b) in the stomach “to get him to stop resisting. It wasn’t in order to hurt him. It was more to shock him to get him to stop pushing me.” But, PO Reyes added that he was “not an efficient boxer” and was “not going to be like ‘yo, I aimed for that and I hit him there.’” He stated that he believed he hit § 87(2)(b) in the stomach and not in the “testicles” (though he had not been asked about testicles). Prior to being shown the video footage, he stated that if the video footage showed him pushing § 87(2)(b) it was because § 87(2)(b) was pushing him. PO Reyes denied pushing § 87(2)(b) against the wall the way § 87(2)(b) and § 87(2)(b) had alleged.

Sgt. Tavares did not witness the circumstances of § 87(2)(b)s arrest, since the officers dispersed to different areas of the yard and he was interacting with the DJ throughout the incident. He could not account for PO Reyes’ actions at the party, and did not notice § 87(2)(b) until he saw § 87(2)(b) standing ten feet away with PO Reyes after other partygoers dispersed. PO Reyes informed Sgt. Tavares at the stationhouse that § 87(2)(b) was arrested for disorderly conduct.

PO Laverty, who was identified from the video footage as standing in the vicinity of PO Reyes’ interaction with § 87(2)(b) did not recall PO Reyes’ interaction with § 87(2)(b). However, he recalled that additional units were called, since the backyard was “pitch dark” and people were throwing bottles of alcohol at the officers.

The video is partially unclear to the lighting and camera motion, but can be made clearer by adjusting media player settings. For the first six seconds, an officer is visible facing away from

§ 87(2)(b) and PO Reyes, and unidentified voices can be heard saying “move back” and “she’s not in the way.” The camera is moving around, and it passes quickly over PO Reyes and § 87(2)(b). They do not appear to be struggling, but it is difficult to determine what is occurring. Approximately six seconds into the video, the camera points more directly towards PO Reyes and § 87(2)(b). PO Reyes is standing with his back to the camera, and § 87(2)(b) is standing facing him. A third officer appears to be standing directly to § 87(2)(b)’s left, facing him, but it is not clear what he is doing. It is difficult to see what they are doing, but they do not appear to be struggling. PO Reyes’ right arm hangs at his side, but then moves backwards, and then moves forwards in what appears to be an uppercut motion toward § 87(2)(b)’s midsection. People in the crowd shout “oh, he punched him, he punched him.”

Patrol Guide Procedure 203-11 states that officers must use minimal necessary force to affect an arrest.

§ 87(2)(g)

§ 87(2)(g)

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§ 87(2)(g)

**Allegation B – Abuse of Authority: An officer attempted to interfere with § 87(2)(b)’s recording of the incident**

§ 87(2)(g)

§ 87(2)(b) alleged that when she attempted to record the incident, an unidentified officer stated “you want my light” and pointed her flashlight into § 87(2)(b)’s camera, preventing it from capturing more of the incident. § 87(2)(b) provided video footage that shows an officer’s flashlight pointing into her camera, but it does not appear that the officer actively prevented § 87(2)(b) from recording the incident, since the officer points the flashlight in other directions several times and does not appear to be moving the flashlight to keep it in front of the camera. The video footage also shows that the area was dark. The officer does not say “you want my light” in the footage provided.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Team:

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_

	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date